CASE 0:04-cv-03616-MJD-SRN Document 24 Filed 04/17/06 Page 1 of 10

UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

In re: Baycol Products Liability Litigation

MDL No. 1431

This Document Relates to:

One Hundred Forty-Two (142)
Branch Law Firm Cases listed as
"Other Unacceptable PFS [Plaintiff
Fact Sheet] submissions pursuant
to PTO 81 Order w/ 12/8/04 deadline."

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Jonathan Lebedoff dated March 28, 2005, recommending denial of Plaintiffs' Motion in Anticipation of Possible Dismissal Under PTO 81 and Reconsideration. Also before the Court is a motion for relief under Federal Rules of Civil Procedure 60(b) filed on behalf of the affected Plaintiffs by the law firm of Zimmerman Reed, PLLP. The Branch Law Firm moves to strike this motion for Rule 60(b) Relief.

Pursuant to statute, the Court has conducted a <u>de novo</u> review of the record.

28 U.S.C. § 636(b)(1); Local Rule 72.1(c). Based on that review the Court

ADOPTS in part the Report and Recommendation, but will grant Plaintiffs limited relief as discussed below.

SCANNED

APR 1.7 2006

U.S. DISTRICT COURT MPLS

Throughout its management of this MDL proceeding, the Court recognizes that it has dismissed a great number of claims based on a plaintiff's failure to comply with discovery deadlines. The matter currently before the Court concerns such a failure to timely comply with discovery deadlines. However, the issues involved here are quite unusual, and require the Court to look beyond the simple issue of missed deadlines.

Here, local counsel has taken the unusual step of requesting that the Court allow them access to certain plaintiffs they believe have meritorious claims, and that the sanction of dismissal does not serve the ends of justice because the missed deadlines appear to have resulted from miscommunications between staff in the Branch Law Firm. The Branch Law Firm objects to the request of local counsel to the extent that local counsel is given access to certain plaintiffs, but appears to be in agreement that certain of the plaintiffs that are the subject of this motion have meritorious claims.

Because dismissal is a severe sanction under Fed.R.Civ.P. 37, and because it appears that failure to comply with the discovery deadlines rests solely with the Branch Law Firm, and because local counsel and the PSC have taken the unusual step of requesting the opportunity to directly assist in ensuring the discovery deadlines are met, the Court will grant the motion of Zimmerman Reed and the PSC as to those plaintiffs only identified by the Branch Law Firm in Exhibit 2 to their objections to the Report and Recommendation.

IT IS HEREBY ORDERED that:

- 1. Plaintiffs' Motion in Anticipation of Possible Dismissal Under PTO 81 and Reconsideration, in relation to "One Hundred Forty-Two (142) Branch Law Firm Cases listed as 'Other Unacceptable PFS (Plaintiff Fact Sheet) submissions pursuant to PTO 81 and Order w/ 12/08/04 deadline" is granted only as to those plaintiffs listed in the attached Exhibit.
- 2. The Motion of Zimmerman Reed and the PSC for Relief under Fed.R.Civ.P.60(b) is granted as to those plaintiffs listed in the attached Exhibit.
- 3. Plaintiffs' Motion to Strike Zimmerman Reed and the PSC's Motion is DENIED.
- 4. Plaintiffs' Motion to Strike Defendant's Opposition is DENIED.

Date: APR 1 7 2006

Michael J. Davis

United States District Court

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Other Unacceptable PFS submissions pursuant to PTO 81 Order w/ 12/08/04 deadline

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EXHIBIT "2"

Plaintiff	Date PFS Sent	Authorizations Sent
Daryoush Behnia	November 23, 2004	Hippa No Psych
Catherine Benfield	December 3, 2004	Hippa No Psych, Workers Comp/SSN
Milton Brannon	December 3, 2004	
Kenneth Bryan	November 23, 2004	Hippa No Psych
Wayne Buck	December 8, 2004	Hippa No Psych
James Castleberry	December 7, 2004	
Herbert Dadyala	December 7, 2004	Hippa No Psych, Employment, Workers Comp/SSN
Thomas Dixon	December 3, 2004	Hippa Psych, No Psych, Workers Comp/SSN
Rubye Edwards	December 1, 2004	Hippa No Psych, Workers Comp/SSN
Laura Fields	December 3, 2004	Hippa No Psych, Workers Comp/SSN
Juanita Flanagan	December 3, 2004	Hippa No Psych, Employment, Workers Comp/SSN
Debashish Ghosh	December 8, 2004	Hippa No Psych, Workers Comp/SSN
Larry Harrington	December 3, 2004	Hippa No Psych, Hippa Psych
Maria Patricia Hill	December 3, 2004	Hippa No Psych, Employment, Workers Comp/SSN
Beatrice Hinson	December 3, 2004	Hippa No Psych, Employment, Workers Comp/SSN
Glenda Long	December 7, 2004	Hippa No Psych, Employment, Workers Comp/SSN
James Nelson	December 1, 2004	
Josie Nivens	December 1, 2004	Hippa No Psych, Employment, Workers Comp/SSN
James Pylate	November 23, 2004	
Emma Rash	December 1, 2004	Hippa No Psych, Employment, Workers Comp/SSN
Julia Romano	December 3, 2004	
Marlene Troy	December 8, 2004	Hippa No Psych, Employment, Workers Comp/SSN
Jewel Worsley	December 1, 2004	Hippa No Psych, Employment, Workers Comp/SSN